IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO.365 OF 1993

Vinita Vinayak Parulekar,
residing at 10/A, Kanchan Kutir,
Pandurang Wadi, Dombivali (East),
Thane. .. Petitioner

v/s.

1. The Chairman,
Maharashtra Vidya Vikas
Mahamandal, having his office
at S.K.Pantwalvalkar Madhymik
Vidyalaya, Nehru Nagar,
Kurla (East), Bombay-400 024.

2. Headmaster,
S.K.Pant-Walawalkar Madhyamik
Vidyalaya, Nehru Nagar,
Kurla (East), Bombay-400 024.

3. Education Inspector,
Greater Bombay-North Region,
Office of Deputy Director of
Education, Churchgate,
Bombay-400 020.

4. Director of Education (Schools)
having his offie at Central
Building, Bhandarkar Road,
Pune-1.

5. Smt.Manisha Shirke
Assistant teacher in S.K.Pant
Walawalkar High School,
Nehrunagar, Kurla (East),
Bombay-400 024.

6. Mrs.Shinde S.,
Assistant teacher in S.K.Pant
Walawalkar High School,
Nehru Nagar, Kurla (East),
Bombay-400 024.

7. Mrs.Sapule,
Assistant teacher in
New English School,
Bhandup, Bombay-400 024.

8. Shri Koyande,
Assistant teacher in S.K.Pant
Walawalkar High School,
Nehru Nagar, Kurla (East),
Bombay-400 024. .. Respondents

Mr.Mihir Desai for the petitioner.

Shri C.S.Joshi for the respondent No.2.

Mr.P.M.Mokashi, Assistant Government Pleader for the State.

ALONGWITH

WRIT PETITION NO.367 OF 1993

Smt.Shilpa Dinesh Parulekar
residing at C/2, Azad Nagar,
Kidwai Road, Wadala,
Bombay- 400 031. .. Petitioner

v/s.

1. The Chairman,
Maharashtra Vidya Vikas
Mahamandal, having his office
at S.K.Pantwalvalkar Madhymik
Vidyalaya, Nehru Nagar,
Kurla (East), Bombay-400 024.

2. Headmaster,
S.K.Pant-Walawalkar Madhyamik
Vidyalaya, Nehru Nagar,
Kurla (East), Bombay-400 024.

3. Education Inspector,
Greater Bombay-North Region,
Office of Deputy Director of
Education, Churchgate,
Bombay-400 020.

4. Director of Education (Schools)
having his offie at Central
Building, Bhandarkar Road,
Pune-1.

5. Smt.Manisha Shirke
Assistant teacher in S.K.Pant
Walawalkar High School,
Nehrunagar, Kurla (East),
Bombay-400 024.

6. Mrs.Shinde S.,
Assistant teacher in S.K.Pant
Walawalkar High School,
Nehru Nagar, Kurla (East),
Bombay-400 024.

7. Mrs.Sapule,
Assistant teacher in
New English School,
Bhandup, Bombay-400 024.

8. Shri Koyande,
Assistant teacher in S.K.Pant
Walawalkar High School,
Nehru Nagar, Kurla (East),
Bombay-400 024. .. Respondents

Mr.Mihir Desai for the petitioner.

Shri C.S.Joshi for the respondent No.2.

Mr.P.M.Mokashi, Assistant Government Pleader for the State.

ALONGWITH

WRIT PETITION NO.371 OF 1993

Smt.Shama Dattaram Vichare,
residing at 24, Jainarnath
Co.op. Hsg.Society, Vasantwadi,
Sant Namdeo Path, Dombivli (East),
Thane. .. Petitioner

v/s.

1. The Chairman,
Maharashtra Vidya Vikas
Mahamandal, having his office
at S.K.Pantwalvalkar Madhymik
Vidyalaya, Nehru Nagar,
Kurla (East), Bombay-400 024.

2. Headmaster,
S.K.Pant-Walawalkar Madhyamik
Vidyalaya, Nehru Nagar,
Kurla (East), Bombay-400 024.

3. Education Inspector,
Greater Bombay-North Region,
Office of Deputy Director of
Education, Churchgate,
Bombay-400 020.

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having his offie at Central
Building, Bhandarkar Road,
Pune-1.

5. Smt.Manisha Shirke
Assistant teacher in S.K.Pant
Walawalkar High School,
Nehrunagar, Kurla (East),
Bombay-400 024.

6. Mrs.Shinde S.,
Assistant teacher in S.K.Pant
Walawalkar High School,
Nehru Nagar, Kurla (East),
Bombay-400 024.

7. Mrs.Sapule,
Assistant teacher in
New English School,
Bhandup, Bombay-400 024.

8. Shri Koyande,
Assistant teacher in S.K.Pant
Walawalkar High School,
Nehru Nagar, Kurla (East),
Bombay-400 024. .. Respondents

Mr.Mihir Desai for the petitioner.

Shri C.S.Joshi for the respondent No.2.

Mr.P.M.Mokashi, Assistant Government Pleader for the State.

ALONGWITH

WRIT PETITION NO.372 OF 1993

Smt.Shubda Anant Patkar,
residing at 32/B, Shriniwas
Apartments, Manpada Road,
Dombivli (East), Thane. .. Petitioner

v/s.

1. The Chairman,
Maharashtra Vidya Vikas
Mahamandal, having his office
at S.K.Pantwalvalkar Madhymik
Vidyalaya, Nehru Nagar,
Kurla (East), Bombay-400 024.

2. Headmaster,
S.K.Pant-Walawalkar Madhyamik
Vidyalaya, Nehru Nagar,
Kurla (East), Bombay-400 024.

3. Education Inspector,
Greater Bombay-North Region,
Office of Deputy Director of
Education, Churchgate,
Bombay-400 020.

4. Director of Education (Schools)
having his offie at Central
Building, Bhandarkar Road,
Pune-1.

5. Smt.Manisha Shirke
Assistant teacher in S.K.Pant
Walawalkar High School,
Nehrunagar, Kurla (East),
Bombay-400 024.

6. Mrs.Shinde S.,
Assistant teacher in S.K.Pant
Walawalkar High School,
Nehru Nagar, Kurla (East),
Bombay-400 024.

7. Mrs.Sapule,
Assistant teacher in
New English School,
Bhandup, Bombay-400 024.

8. Shri Koyande,
Assistant teacher in S.K.Pant
Walawalkar High School,

Nehru Nagar, Kurla (East),
Bombay-400 024. .. Respondents

Mr.Mihir Desai for the petitioner.

Shri C.S.Joshi for the respondent No.2.

Mr.P.M.Mokashi, Assistant Government Pleader for the State.

ALONGWITH

WRIT PETITION NO.373 OF 1993

Smt.Ashwini Ashok Khandekar,
residing at 70/557, Pratiksha
Nagar, Sion Koliwada,
Bombay-400 027. .. Petitioner

v/s.

1. The Chairman,
Maharashtra Vidya Vikas
Mahamandal, having his office
at S.K.Pantwalvalkar Madhymik
Vidyalaya, Nehru Nagar,
Kurla (East), Bombay-400 024.

2. Headmaster,
S.K.Pant-Walawalkar Madhyamik
Vidyalaya, Nehru Nagar,
Kurla (East), Bombay-400 024.

3. Education Inspector,
Greater Bombay-North Region,
Office of Deputy Director of
Education, Churchgate,
Bombay-400 020.

4. Director of Education (Schools)
having his offie at Central
Building, Bhandarkar Road,
Pune-1.

5. Smt.Manisha Shirke
Assistant teacher in S.K.Pant
Walawalkar High School,

Nehrunagar, Kurla (East),
Bombay-400 024.

6. Mrs.Shinde S.,
Assistant teacher in S.K.Pant
Walawalkar High School,
Nehru Nagar, Kurla (East),
Bombay-400 024.

7. Mrs.Sapule,
Assistant teacher in
New English School,
Bhandup, Bombay-400 024.

8. Shri Koyande,
Assistant teacher in S.K.Pant
Walawalkar High School,
Nehru Nagar, Kurla (East),
Bombay-400 024. .. Respondents

Mr.Mihir Desai for the petitioner.

Shri C.S.Joshi for the respondent No.2.

Ms.S.M.Dandekar, Assistant Government Pleader for the State.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 12th August, 2005

ORAL JUDGMENT (Per R.M.Lodha, J.)

This group of five writ petitions involves the identical issues and, therefore, all these matters were taken up together and are being disposed of by this common judgment.

2. The grievance of these five petitioners relate to their claim to trained graduate scale from the date they acquired graduation and all consequential and subsequent benefits including yearly increments,

arrears on account of pay difference and revised pay fixation and promotion to senior grade.

WRIT PETITION NO.365 OF 1993

3. The petitioner in this writ petition was appointed as assistant teacher in Pant Walawalkar Secondary School run by the first respondent with effect from 18.9.1979 in the undergraduate scale. At the time of her appointment, she was S.S.C., D.Ed. Later on in the year 1981, she acquired qualification of B.A. In the year 1995, she acquired qualification of B.Ed.

WRIT PETITION NO.367 OF 1993

4. The petitioner in this writ petition was appointed as assistant teacher in Pant Walawalkar Secondary School with effect from 20.6.1974. She was S.S.C. D.Ed. at the time of hear appointment. In the year 1982, she acquired qualification of B.A. In the year 1995, she acquired qualification of B.Ed.

WRIT PETITION NO.371 OF 1993

5. The petitioner in this writ petition was

appointed as assistant teacher in Pant Walawalkar Secondary School with effect from 5.7.1979 in undergraduate scale. She was S.S.C., D.Ed. at the time of her appointment. In the year 1985, she got the degree of B.A. She acquired B.Ed. in the year 1993.

WRIT PETITION NO.372 OF 1993

6. The petitioner in this writ petition was appointed as assistant teacher in Pant Walawalkar Secondary School with effect from 4.8.1975 in the undergraduate scale. At the time of her appointment, she was S.S.C., D.Ed. Later on in the year 1982, she became graduate (B.A.). She got the degree of B.Ed. in the year 1994.

WRIT PETITION NO.373 OF 1993

7. The petitioner in this writ petition was appointed as assistant teacher in Pant Walawalkar Secondary School with effect from 12.6.1978 in the undergraduate scale. At the time of her appointment, she was S.S.C., D.Ed. In the year 1982, she got the degree of B.A. She acquired degree of B.Ed. in the year 1996.

8. The case set up by these petitioners is that upon having become graduate they became eligible for promotion to the graduate scale on the basis of their seniority. As per the Grant-in-Aid policy, 25% of the total teaching staff in the secondary school can be placed in the graduate scale if they are trained graduates and if they fall in the category of senior most 25% teachers. The petitioners took up the matter with the concerned authorities for getting their pay fixed in the trained graduate scale from the date they acquired graduation (B.A.). According to them by the circular dated 9.7.1987 issued by the Director of Education (Schools), it was made clear that the trained graduate teachers who are already in service be placed in the trained graduate scale and given teaching work of VIII standard and above on the basis of their seniority as soon as vacancy arises in the quote of 25%. The petitioners submit that in the said circular dated 9.7.1987 it was also stated that the outside teachers recruited from open market should not be appointed directly on the posts in quota of 25% trained graduate scale and only those who are in service should be promoted to the trained graduate scale in their order of seniority. All the above petitioners took up the matter with the Management (respondent No.1). The Education

Inspector (respondent No.3) vide his letter dated 27.4.1992 directed the Management to send the proposal of placing the petitioners in the trained graduate scale in accordance with the Rules. To their great dismay instead of giving trained graduate scale to the petitioners, the respondent No.1 appointed respondent Nos.5,6,7 and 8 and put them in the 25% trained graduate scale ignoring the claim of the petitioners. Aggrieved thereby, as indicated above, the petitioners have filed these five writ petitions claiming their graduate scale from the date they acquired graduation.

9. The petitioners claim is contested by the respondents. In the reply affidavit filed on behalf of the respondent Nos.3 and 4, the case has been set up that as per the provisions of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, the assistant teachers are appointed to teach the students from standard V to VII. 75% of those are required to be appointed in trained undergraduate scale and 25% in trained graduate scale. Those assistant teachers who possess at the time of their appointment graduate trained qualifications and are appointed to teach V to VII standard in trained undergraduate scale as well as those trained undergraduate teachers appointed to

teach V to VII standard after their appointment obtain graduate qualifications, such teachers are entitled on the basis of their seniority to be upgraded to the trained graduate scale in the quote of 25% of the total assistant teachers appointed for V to VII standards. Such assistant teachers holding trained graduate qualifications and who are entitled on the basis of the seniority for appointment in the trained graduate scale of 25% of the quote can be so appointed in the said quota as and when vacancy arises in the said quota. It is stated that all the five petitioners have been upgraded to the trained graduate scale during the pendency of the writ petition. As regards respondent Nos.5 to 8, it is stated that as they fulfilled the eligibility criteria, their appointment in the trained graduate scale was approved.

10. The respondent Nos.1 and 2 (the Management and the Headmaster of the School) have set up the case that as per the circulars dated 15.6.1984 and 9.7.1987, issued by the respondent Nos.3 and 4 and the qualification of the petitioners, they have been given trained graduate scale during the pendency of the writ petition when the vacancy arose. According to the respondent Nos.1 and 2, the eligibility and qualification for trained graduate scale is B.Ed.

and the claim of the petitioners for the grant of trained graduate scale from the date they acquired ordinary graduation is misconceived. The respondent Nos.1 and 2 have also set up the case that respondent Nos.5 to 8 were appointed from outside looking to their qualification and expertise in the subjects and their appointment was duly approved by the Education Authorities. In so far as petitioners are concerned, they were only graduates either in Marathi, Sociology, History and Economics and could not teach subjects like Mathematics, Physics, Chemistry and, therefore, teachers from open market were required and the respondent Nos.5 to 8 were appointed accordingly.

11. We heard the learned counsel for the petitioners, the learned counsel for the respondent Nos.1 and 2 and the learned Assistant Government Pleader.

12. The Maharashtra Employees of Private Schools Rules, 1981 prescribes the qualification for trained teachers in the secondary schools. The said qualification as prescribed in the Rules is thus-

> "(i) A Bachelor's degree in Teaching or Education of any statutory University or a qualification recognised by Government as

equivalent thereto;

[ii) A Teaching Diploma of any statutory University, if a person holding it is appointed for the first time before the 1st October 1970 and continues to serve as a teacher with or without break after that date.

(iii) A Secondary Teachers' Certificate of the Education Department of Maharashtra State, if a person holding it is appointed for the first time before the 1st October 1970 and continues to serve as a teacher with or without break after that date];

(iv) A Diploma in Education of the Graduates Basic Training Centres;

(v) A Diploma in Physical Education or a qualification recognised by Government as equivalent thereto; or Bifocal Higher Diploma in Physical Education of the Government of Maharashtra as Physical Education with one of the method subjects) or B.P.Ed. (Marathwada University) or B.P.Ed. (Shivaji University) or B.Ed. (Physical Education) (Poona University) or B.Ed. (Physical Education)(Bombay University) [or B.P.Ed. (Nagpur University)] or Diploma in Physical Education, Culture and Recreation awarded by Hanuman Vyayam Prasarak Mandal, Amravati;

or

(vi) any other degree, diploma or certificate which Government or the Inter University Board may sanction as equivalent to any of the above qualifications."

13. As already indicated by us, these five petitioners acquired B.Ed. in the year 1993, 1994, 1995 and 1996. The case of the petitioners that

they were entitled to the category of trained graduate teachers from the date they acquired ordinary graduation (i.e. B.A.) as they were already holding diploma in the education, is wholly misconceived. Before the petitioners can be placed in the trained graduate scale, they have to be trained graduate teacher first which they could have only after they acquired B.Ed. The petitioners' claim of trained graduate scale from the date they got B.A., thus, cannot be accepted.

14. The petitioners' challenge to the appointment of respondent Nos.5 to 8 as trained graduate teachers in the trained graduate scale is also wholly misconceived. It is not in dispute that these four respondents were appointed as trained graduate teachers in the year 1992. At that time, none of these petitioners had acquired B.Ed. and, therefore, were not eligible to be appointed as trained graduate teachers.

15. It is the case of the respondent Nos.3 and 4 and that is not disputed by the petitioners that as per the provisions of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, the assistant teachers who are appointed to teach the students from standard V to VII, 75% of

those should be appointed in trained undergraduate scale and 25% to be appointed in trained graduate scale. It is not in dispute that all the five petitioners were appointed in the trained undergraduate scale and they fell in the category of 75% appointees. The circulars and the policy issued by the respondent Nos.3 and 4 that trained undergraduate teachers appointed to teach V to VII standards upon their acquiring the qualification of trained graduate teacher, such teachers are entitled to be upgraded to trained graduate scale in the quota of 25% of the total assistant teachers appointed for V to VII standard is not in question. But before us are no details of the teachers covered by the 75% of the trained graduate scale and 25% of the trained graduate scale. These facts have not been placed by any of the parties. As a matter of fact, it was incumbent upon the petitioners to place before the court the strength of teachers (75% trained undergraduate and 25% trained graduate) approved in the schools run by the respondent No.1. The details of the teachers who were appointed in the trained undergraduate scale and the details of those who were appointed to trained graduate scale are not available. The petitioners have not even chosen to place on record the seniority list of the trained undergraduate

scale teachers of the relevant years. Their claim, thus, that upon having obtained graduate qualification, they were entitled on the basis of their seniority to be upgraded to trained graduate scale is not founded on any material.

16. It is not in dispute that all these petitioners have now been granted trained graduate scale as and when vacancy occurred.

17. For all these reasons, we are satisfied that no interference is called for in the extraordinary jurisdiction. These five writ petitions are dismissed with no order as to costs.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)